

Food and Nutrition Service, USDA

§ 226.9

losses generally. No overpayment shall be disregarded, however, where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is evidence of violation of criminal law or civil fraud statutes.

(f) While OIG shall rely to the fullest extent feasible upon State sponsored audits, OIG may, whenever it considers necessary:

- (1) Make audits on a statewide basis;
- (2) Perform on-site test audits;

(3) Review audit reports and related working papers of audits performed by or for State agencies.

(g) State agencies are not required to provide a hearing to an institution for State actions taken on the basis of a Federal audit determination. If a State agency does not provide a hearing in such situations, FNS will provide a hearing, upon request, in accordance with procedures set forth in § 226.6(k).

[47 FR 36527, Aug. 20, 1982, as amended at 50 FR 8580, Mar. 4, 1985; 51 FR 4295, Feb. 4, 1986; 52 FR 5526, Feb. 25, 1987; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 67 FR 43490, June 27, 2002]

Subpart D—Payment Provisions

§ 226.9 Assignment of rates of reimbursement for centers.

(a) The State agency shall assign rates of reimbursement, not less frequently than annually, on the basis of family-size and income information reported by each institution. Assigned rates of reimbursement may be changed more frequently than annually if warranted by changes in family-size and income information. Assigned rates of reimbursement shall be adjusted annually to reflect changes in the national average payment rates.

(b) The State agency shall either:

(1) Require that institutions submit each month's figures for meals served daily to participants from families meeting the eligibility standards for free meals, to participants from families meeting the eligibility standards for reduced-price meals, and to participants from families not meeting such guidelines; or

(2) Establish claiming percentages, not less frequently than annually, for each institution on the basis of the

number of enrolled participants eligible for free, reduced-price, and paid meals; or

(3) Determine a blended per-meal rate of reimbursement, not less frequently than annually, by adding the products obtained by multiplying the applicable national average payment rate of reimbursement for each category (free, reduced-price, paid) by the claiming percentage for that category.

(c) States have two methods of reimbursing institutions. The method chosen by the State agency must be applied to all institutions participating in the Program in that State. These methods are:

(1) Meals times rates payment, which involves reimbursing an institution for meals served at the assigned rate for each meal. This method entails no comparison to the costs incurred by the institution for the meal service; and,

(2) Meals times rates or actual costs, whichever is the lesser, which involves reimbursing an institution for meals served at the assigned rate for each meal or at the level of the costs actually incurred by the institution for the meal service. This method does entail a comparison of the costs incurred to the meal rates, with the costs being a limiting factor on the level of reimbursement an institution may receive.

(d) In those States where the State agency has chosen the option to implement a meals times rates payment system State-wide, the State agency may elect to pay an institution's final claim for reimbursement for the fiscal year at higher reassigned rates of reimbursement for lunches and suppers; however, the reassigned rates may not exceed the applicable maximum rates of reimbursement established under § 210.11(b) of the National School Lunch Program regulations. In those States which use the method of comparing meals times rates or actual costs, whichever is lesser, the total payments made to an institution shall not exceed the total net costs incurred for the fiscal year.

[47 FR 36527, Aug. 20, 1982, as amended at 48 FR 21530, May 13, 1983; 53 FR 52590, Dec. 28, 1988; Amdt. 22, 55 FR 1378, Jan. 14, 1990]